

APPEAL NO. 040079
FILED FEBRUARY 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 2, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury in the form of an occupational disease with a date of injury of _____, timely reported her injury, and had disability commencing March 24 through May 4, 2003, and again from May 19 through June 29, 2003. The appellant (carrier) appealed, arguing that the claimant failed to report a nexus between her employment and her injury and that the claimant failed to timely report her work-related condition within 30 days of the date of injury. The carrier also contends that the claimant's job duties were not repetitiously traumatic in nature. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that she processed business receivables for the employer which required her to move her wrists and hands very fast for sustained periods of time, and contended that she sustained a compensable injury as a result of the repetitive activity performed in the course and scope of her employment. An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36). Conflicting evidence was presented on this disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's compensability determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which (in cases of an occupational disease) the employee knew or should have known that the injury may be related to the employment. Section 409.002 provides that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the employer or the carrier has actual knowledge of the employee's injury, the Texas Workers' Compensation Commission (Commission) determines that good cause exists for failure to provide notice in a timely manner, or the employer or the carrier does not contest the claim. The date of injury, when the claimant knew or should have known that her injuries may be related to the employment, and whether the carrier is relieved

from liability because it did not receive timely notice of the injury, were also issues for the hearing officer to resolve. Conflicting evidence was presented regarding the date of injury. When the employer knows of an injury but is not informed of the work-related nature of the injury or does not know of the work-related nature of the injury, the claimant has not met the notice requirement of the provisions of Section 409.001 nor the knowledge requirement of the provisions of Section 409.002. The hearing officer found that the employer had actual notice of the claimed injury on or about _____, noting that it was apparent that the claimant resigned from her position with the employer because of an injury caused by her employment duties. Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). The hearing officer's determination of date of injury and timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." On appeal, the carrier argues that there can be no disability because there was no compensable injury. The parties stipulated that if the injury was found compensable that the claimant had disability for the periods found by the hearing officer. Since we have affirmed the determination that the claimant sustained a compensable injury, we likewise affirm the disability determination.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge